

LESSONS OF THE ANNA M. ROSENBERG HEARINGS

Where Congressional Investigations Go Wrong

HERRYMON MAURER

ALMOST as soon as it began, it became clear that the inquiry into the loyalty of Anna M. Rosenberg and her fitness to be Assistant Secretary of Defense would have to become an inquiry into the motives and mental competence of Mrs. Rosenberg's accusers. And before it was over, the problems provoked by the Senate investigation turned out to have less to do with accusers or accused than with the investigation itself—and indeed with the whole process of investigation as currently practiced.

Imprisoned within a rather too familiar rectangle whose four sides are Communists, ex-Communists, non-Communists accused of being Communists, and professional anti-Communists, the intelligent citizen or legislator soon found himself hopelessly bewildered. While damaging facts concerning Mrs. Rosenberg were narrowing towards nothing, significant facts concerning her accusers were proliferating like a unicellular

organism suddenly impelled to throw off shoots. The facts spread out to include the motives of the witnesses against her, their stability of mind, political beliefs, views on religion, records of occupation, psychological difficulties, together with their relations with family, friends, and even passing acquaintances. The testimony of two persons made it necessary for the Senate committee to question in detail eight others simply to settle the question of Mrs. Rosenberg's truthfulness. To settle the question of the truthfulness of those ten, it probably will prove necessary for some investigative body—probably a grand jury—to question hundreds, ranging from professed Communists to professed anti-Semites.

Such self-multiplication of evidence is, of course, one of the reasons why it is so hard to smoke out anti-democratic individuals without stirring up an undemocratic stench, and without raising in the minds of thoughtful citizens grave questions as to the procedures currently used in such investigations and even as to the advisability altogether of investigating publicly anybody on any subject that generates public heat. One need not go beyond the stenographic record—and in the study that follows we will limit ourselves to what appears there—to find amply visible the highly disturbing dilemma that dogs most Congressional investigations: how to shield innocence whilst uncovering guilt.

SO FAR as the record shows, the story of the investigation begins with a witness, very active against Mrs. Rosenberg, who saw himself as "victim of a smear attack" and commented feelingly on the "terrors of the 'smear bund.'" Ironically, this witness, Benjamin H. Freedman, played the most conspicuous role in bringing the full-scale investigation about. Shortly after the nomination of Mrs. Rosenberg on November 9, Freedman purchased fifty thousand copies of the November issue of *Common Sense*—

THE Congressional hearings on Anna M. Rosenberg's fitness to serve as Assistant Secretary of Defense emphasized some of the more complex difficulties involved in efforts to destroy Communist influence in this country, and cast a bright light on the peculiar roles played in these matters by Communists, ex-Communists, and professional anti-Communists, as well as on the whole process of Congressional investigations themselves, whose value increasingly large sections of the citizenry have come to question. HERRYMON MAURER, who here analyzes the record of the Rosenberg hearings, is a former editor of *Fortune* and now one of that magazine's regular contributors. His book on Gandhi, *Great Soul*, appeared in 1948, and *Collision of East and West*, a study of China, Japan, and Korea, will be published this month by Henry Regnery. Mr. Maurer's most recent contribution to *COMMENTARY* was "The Middle Ground Where Nehru Stands," in our March issue of this year. Mr. Maurer was born in Sewickley, Pennsylvania, in 1914, and studied at the University of Pittsburgh.

a magazine called anti-Semitic by several witnesses, and whose November issue was critical of Mrs. Rosenberg—and mailed out twenty-five thousand of them to a list that included all the names in the Congressional Directory. Immediately after the Senate Armed Services Committee endorsed Mrs. Rosenberg on November 29, Freedman was in touch with Representative Rankin and Gerald L. K. Smith, individuals whom the committee record does not further identify. He then returned from Washington to New York, where he talked for “a few minutes” or for “at least twenty minutes” with J. B. Matthews, a former research director for the Dies Committee, and secured a copy of a nine-page document dealing with organizations with which the name “Anna Rosenberg” had been connected. He also came in touch with a former Communist party member, Ralph De Sola, through the offices of a lawyer who had represented Freedman in libel suits against the Anti-Defamation League of the B'nai B'rith, and who was associated with Joe McWilliams, identified in the record as “the famous anti-Semitic street-corner orator.” On Sunday morning, December 3, Freedman talked for two and a half to three hours with De Sola, who told him that he had been in the John Reed Club—a Communist cultural organization of the early 30's—with Anna Rosenberg.

Armed with what he recalled of the information given him by Matthews and De Sola, Freedman went to Washington, visited two of the Senators of the Armed Services Committee, and dictated two memoranda in the office of Representative Rankin, signed copies of which were sent to the two Senators. The first of these memoranda asserted that J. B. Matthews had said “that to his knowledge there is a file in the FBI . . . which contains information ‘to prove that Anna M. Rosenberg is the least desirable person in the entire United States to be appointed to that position.’” The second stated that Ralph De Sola had said “that on numerous occasions he was present at the meetings of the John Reed Club when Anna M. Rosenberg, whose picture he identified as the person recently appointed as Assistant Secretary of Defense, was also present.” This memorandum contained other remarks that De Sola was said to have made, among them the charge that Anna

M. Rosenberg had designated De Sola's wife to plant Communist agents in the New York City schools.

On Tuesday, December 5, the Senate committee decided to reopen its hearings on Mrs. Rosenberg's appointment. During this day, Freedman was with De Sola in New York while the latter prepared a sworn statement to send to the committee. Both men were visited during the evening by FBI agents. Late in the evening, Freedman was visited also by an investigator for Senator Joseph McCarthy (not a member of the Armed Services Committee but not otherwise described in the record) and by a reporter for Fulton Lewis, Jr., whom also the record does not further identify. These men brought with them a letter of introduction from Gerald L. K. Smith, but Freedman testified that he did not open the letter and that he had the impression that the men were Armed Services Committee investigators. The outcome of this visit was, first of all, a conversation that lasted either “a few minutes,” “fifteen minutes,” or “a good hour . . . long enough to consume two scotch and sodas and an egg sandwich” and, second, a note of introduction for the “investigators” to De Sola, the wording of which nobody concerned was able to recall. The two men visited De Sola the next morning, procured a copy of his sworn statement, and took it back to Washington. The next day, Freedman and De Sola took dinner together. They traveled to Washington, and—according to Freedman—went to Senator McCarthy's office.

THE Senate committee resumed its hearings on Friday, December 8. By Wednesday, December 13, when the committee heard its last witness, the case against Mrs. Rosenberg had blown completely apart. De Sola denied he had told Freedman that Mrs. Rosenberg had instructed his wife to plant Communists in New York schools. De Sola's own charge that he had met Mrs. Rosenberg four or five times and had talked to her once at the John Reed Club was not supported by two persons he had described as being present at the club, nor was it supported by his ex-wife, Helen Winner, and a former FBI agent, George Starr, whom he himself had suggested as witnesses. As for J. B. Matthews, he denied that he

had said to Freedman what Freedman said he had, agreed that his information was third-hand, and explained that another former FBI agent had told him that a Spanish War veteran had been in a Communist cell with Mrs. Rosenberg. This agent (Theodore Kirkpatrick) testified, however, that he could recall the veteran's mentioning the name of Mrs. Rosenberg only in some connection other than that of a Communist cell, while the veteran testified that he had never met Mrs. Rosenberg anywhere and that he had never heard of her being associated with Communist fronts. Meanwhile it had become evident that there were a number of other Anna Rosenbergs, some of whom had in fact been active in Communist organizations.

The committee heard two other witnesses. Dr. Marjorie Shearon held that Mrs. Rosenberg was unsuitable for Defense department work because of membership in two groups in which there were other members who had been cited as belonging to other subversive organizations, and because one of these two groups, from which Mrs. Rosenberg had happened to resign, was active in national health insurance schemes. Edward Nellor, Fulton Lewis's reporter, when asked to clear up the circumstances of his visits to Freedman and De Sola in company with Senator McCarthy's investigator, presented an account considerably at variance with those of Freedman and De Sola.

Finally, a subcommittee of the Armed Services Committee completed its report on the contents of the FBI file on Mrs. Rosenberg, clearing her once and for all of any imputations of Communism:

SENATOR CAIN: . . . there is not a word in the files, as I have read them, from start to finish to support any of the un-American charges alleged against Mrs. Anna M. Rosenberg.

SENATOR HUNT: I did not see a thing in them, not a thing.

SENATOR BYRD: . . . there is nothing whatever detrimental to Mrs. Rosenberg in that file.

IF THERE was no evidence against Mrs. Rosenberg, why should men have been at pains to claim its possession, particularly when they risked grand jury action if their claim failed to hold up? Why, furthermore, should the evidence of these persons

have fallen out into contradiction? Why should there even have been wide disagreement on matters of no particular bearing at all on Mrs. Rosenberg's appointment?

Obviously the surcharged atmosphere in which the hearings took place, an atmosphere tense not only in Washington but throughout the country, contributed to the drama of this spectacle. Just as obviously, the various witnesses were involved, each in his own fashion, in this atmosphere. To clarify the nature of this involvement, it is necessary to construct hypotheses that will make the behavior of the witnesses at least partially comprehensible, and it is therefore convenient to divide the witnesses into three rough categories: fervent amateurs (i.e., Mrs. Rosenberg's chief accusers); interested professionals (i.e., men who make their living spotting Communists); and more or less innocent bystanders (i.e., persons who became involved in the hearings only because their names had been dragged in by someone else).

First, the fervent amateurs. Benjamin Freedman is a former businessman (Woodbury Soap) who founded the League for Peace with Justice in Palestine, an organization uncordial to Zionism, and who has been in somewhat intimate contact with certain Mohammedans in Cairo and Bombay. In character he must be one of the most exceptionable persons in the country. He combines extreme zealotry, extreme self-expression, and extreme self-abasement; he surrounds those emotions with a flow of words at one moment reasonably exact and detailed and at the next monstrously confused and evasive; and his words have at times the effect of sounding remarkably comic. Indeed, the literal text of his testimony puts one in mind of Jaroslav Hasek's great creation, Schweik, the good soldier who is innocently evasive, guilelessly crafty, vacuously talkative—and remarkably successful in his skirmishes with hostile authority.

Why did he write the anti-Rosenberg memorandum? "Well, to be frank with you, I did it to establish sufficient interest so that I might be questioned. That was all. . . . All I thought as a layman was, well, certain information came to me, some of it is hearsay and some of it I had looked up, and I said with what is going on and what you read in the papers, with Alger Hiss and

Judith Coplon and Lee Pressman and John Abt and Charles Kramer, and all these other people who were regarded as men of the highest caliber—and Judith Coplon certainly was regarded as a very responsible person—I just thought I would bring it to the attention of somebody, and they could do whatever they saw fit. I didn't know."

Why did he quote De Sola? "I never had met a man face to face who had been a member of the Communist party, and here I was sitting with one who was telling me how these people with whom he had been associated were secretly planning to turn this country over to Russia. That was enough to make me a little unnerved. . . . I had talked to him—or, rather, to put it more correctly, I had listened to him for almost three hours, Senator, and when I came back to dictate this piece of paper, which I was told was necessary at that moment here in Washington to make the people who were going to consider this matter take me seriously, I just put down on paper the first things that came to my mind. . . ."

Here, before the Armed Services Committee, was a man evidently very much dedicated to his own patriotic role and not averse to that role becoming spectacular. But here also, it developed, was a man of inward drives of a different and somewhat hard-to-define sort:

SENATOR SALTONSTALL: What church do you go to?

MR. FREEDMAN: Pardon?

SENATOR SALTONSTALL: What church do you go to?

MR. FREEDMAN: Well, I don't understand your question.

SENATOR SALTONSTALL: Well, are you a Christian or do you practice the Jewish faith, or don't you go to any church?

MR. FREEDMAN: Well, I go to several churches.

SENATOR SALTONSTALL: What ones do you go to?

MR. FREEDMAN: But I don't know what you mean by am I a Christian. I guess if I am a good man, I am a good Christian, even though I may profess another religious belief.

SENATOR SALTONSTALL: Well, what churches do you go to when you wish to worship?

[There was a short pause.]

MR. FREEDMAN: I will say I have gone to synagogues and Catholic churches and Methodist churches, a couple of Presbyterian. It

all depends who I am with and what church they attend. . . . In 1950, well, I went into St. Patrick's Cathedral, St. Ignatius Loyola, a Presbyterian church on Eighty-sixth Street and Amsterdam and—you mean to worship or—because I have gone to these churches to hear various speakers, and there is a church at, I think Sixtieth Street and Park Avenue that has very fine speakers there. I go there. I go to the Congregational Church at Thirty-fifth Street off Park Avenue when they have speakers there. I prefer that type speaker to the movies or other forms of entertainment. . . .

SENATOR SALTONSTALL: Well, I asked you that question very properly, Mr. Freedman, because I will tell you—I have been told that you are very anti-Jewish, anti-Zionist. . . . You have no feeling against the Jewish people at all?

MR. FREEDMAN: Why, that is the most ridiculous statement, but the Anti-Defamation League uses its propaganda machinery to blast me and Lessing Rosenwald and every other person professing Judaism who doesn't agree with them as an anti-Semitic, a Jew-baiter, and other smear names. . . .

[A little later.]

MR. FREEDMAN: Well, I was following Jacob H. Schiff in my thinking at this time [1948, when Freedman was inserting Peace-with-Justice-in-Palestine ads in the *Herald Tribune*] . . . so I don't think I was a renegade or I don't think I was what the smear bund called me for following Lessing Rosenwald, the son of Julius Rosenwald of Sears Roebuck, and Mr. Sulzberger of the *New York Times*, who all adopted exactly the same attitude; but Mr. George Mentzer [sic], who represents Mr. Lehman's organization, called at my home and told me that "if you don't keep quiet"—after the first ad appeared—"you will learn what retaliation means."

A few minutes later, Freedman observed that "In New York City, the newspapers are controlled by Zionists, and anyone who dares open his mouth in opposition to them is smeared, and they have a galaxy of organizations at every level to go to work on you."

Yet the next day he felt impelled to volunteer the information that on the occasion of deaths in his family he saw fit to use Jewish rites and a Hungarian cemetery.

SUCH a sharp division of inward allegiance is not unique, of course, but is comparatively rare. Most persons either pass from one allegiance to another or bury their conflict in the secret recesses of their minds. Freedman

seems to want to be thought a Christian, but even as he is rolling off a list of Christian churches, something prompts him to suggest that he does not worship at such places but rather listens to speeches, which he puts on the same secular plane as movies. Later he feels the need to emphasize his participation in Jewish rites. In short, he seems to want to be a Christian without ceasing to be a Jew, and to buttress the respectability of this desire he irrelevantly drags in the names of well-known Jews who have no such desire themselves.

Prominent in this two-way torment is a compulsion to get along with well-known non-Jews. Note Freedman's unprompted comment on his approaches to Gerald L. K. Smith: "I walked in on Mr. Smith, and I guess, like a great many other non-Judaic people in the United States . . . they think I am a plant or a representative of some organization, and I just gave them a gag that I am interested only in American interests and that I am not truly sectarian. A lot of Americans, as you know, type the Judaic Americans as primarily interested in their own sectarian activities, a lot of them do. Some of them do, I don't know how many."

Split in his statements of inward allegiance and belief, Freedman was frequently chaotic in his evidence about outward facts.

Senator Kefauver questioned Freedman as to how he had first met De Sola and after some time established that the meeting was arranged by telephone.

"Who did you telephone to?" asked the Senator.

"I will explain that," Freedman began. "That afternoon I had been talking to a lawyer who represented me in several of those libel suits I had to bring against the Anti-Defamation League and its various—"

"Who was the lawyer?" the Senator broke in.

"I will mention—" said Freedman, "that was Hallam Richardson."

"Richardson is your lawyer," queried the Senator, "and has been for some time?"

"No; I had different lawyers all my life—Maas and Davidson were my lawyers."

"Richardson was your lawyer; is that right?"

"Then I had another firm of lawyers," Freedman went on.

"I am not asking you about all your law-

yers. You say Richardson was one of your lawyers?"

"He only represented me after these smears started. . . . So I asked him whether he would handle one of these cases. I don't know what the Anti-Defamation League called me that day, but they found something—"

"Anyway," Senator Kefauver interrupted, "you were talking on the telephone with Mr.—"

"Richardson."

"Is that where you learned about Mr. De Sola?"

"No, not on the telephone," said Freedman, and he began talking again about the Anti-Defamation League.

"My question," the Senator pointed out, "was: How did you first get in touch with Mr. De Sola?"

"So I called him up that Saturday. . . ." And so on for a dozen lines more.

It was not simply that Freedman had no knowledge of the rules of evidence. It was as if he had an incomplete knowledge of fact as a thing in itself—as something separate from the desires of his mind and the needs of his emotions. He could recall something and forget it, recall it again and yet forget it again. He could contradict his most straightforward assertions so often that the contradictions sounded like the confusion of child-like innocence. He could, when certain questions were put to him, let loose a flow of enthusiastic incoherence. He could suddenly dart off on irrelevant but lengthy disquisitions—one went on almost twenty minutes—so involved, unexpected, and circumstantial that the Senators themselves, somewhat dazed, would drag along in his wake. The events of the *cause célèbre* which he had launched seemed to run around in chaotic orbits in his mind, and there was no telling when some emotion would throw them into a new, sudden, and quite incredible configuration.

Concerning his meeting with Gerald L. K. Smith he gave no evidence of any significance and managed a thoroughly obfuscating account: "I wished to leave immediately, as I had other appointments to keep. Mr. Smith invited me to return to lunch, which I did. I spent several hours with Mr. Smith listening to the story about his life, and he listened to me for a long time about the story of my life. . . . It is possible for me to recall

how many times I ran into Mr. Smith after the luncheon meeting. It seems that I ran into him quite often, and a few times by arrangement when we ran into each other by accident [sic]. In fact, a young man who was with him apparently became lost and stuck to me until lunch. He missed meeting Mr. Smith and a Reverend who was with Mr. Smith. It was all not very clear at the time. . . . I went to the restaurant with this young man and there met Mr. Smith. . . . I do not recall that the Reverend was present. . . ."

It is not surprising therefore that Freedman was able to agree with Senator Cain in the following conversation:

SENATOR CAIN: . . . You have no knowledge of the—

MR. FREEDMAN: No—

SENATOR CAIN (continuing): Of the validity of any of these charges against Anna M. Rosenberg?

MR. FREEDMAN: No.

SENATOR CAIN: You have not a single fact to support your statement?

MR. FREEDMAN: I have not. . . ."

Nor was it surprising that within a minute the conversation took the following turn:

MR. FREEDMAN: I thought that the thing to do was to call all these facts to the attention of whoever was considering them. . . .

IT WOULD seem that facts were not only at the mercy of Freedman's emotions but also his emotions drew him toward persons whom he considered to be of high social position. ("I will admit," he said, "that when people tell me things I judge from the standing of the person whether I can accept that as true.") This hypothesis is strengthened by the extremes of abasement into which Freedman calmly and regularly threw himself. He announced to the Senators, "Excuse me, you are all expert lawyers and big men, prominent in public life, and this is the first time that I have ever been in any meeting like this. So pardon me if I act amateurish." After one of his accusations was squashed and after the committee insisted that the squashing be announced to the press, he said, "I think that is a very fine attitude." In one sequence of eleven responses to committee questioning, he apologized abjectly to the Senators nine times, only to say, when

dragged back to the point at issue, "I don't remember." And when J. B. Matthews became irate because Freedman had quoted him without his permission, Freedman wrote a letter to him which, according to Senator Cain, "stands forth as one of the most feeling epistles I have heard read or have read in the English language":

"Please permit me the privilege of intruding into the privacy of your home by means of this communication to again tell you how sorry I am about what happened. . . . Rationalizing my unintentional infidelity to the sacred assurance which you have accepted without hesitation or reservation does not solve my troubled conscience. Motivated by a most commendable impulse does not absolve me from having hurt you in some manner not understandable to me, but which makes no difference in the final analysis. . . . Had I thought that it made an iota of difference to you, I would never have taken the step I did. . . . Look your boy in the eye after you have read this letter and try to think that what I was doing was for the sake of him and the millions of others in his position who are in this world only as a result of our part in the matter. If what I have done against you was done for him and his buddies, you may feel that you can extend your gracious pardon without compromising your high standards of ethics and integrity . . . please do not feel unfriendly toward me and reinstate me in your good graces again if it is compatible with the caliber of your conscience."

What is more, Freedman testified, "I would send the same letter to Mrs. Anna Rosenberg [in the case of mistaken identity] that I sent to Dr. J. B. Matthews. In fact, I would carry it to her and beg forgiveness."

"I place myself," he wrote at the end of the hearings, "at the disposal of the committee without compensation and take this opportunity to express my willingness to locate this other Anna Rosenberg without any reimbursement for any such outlays by me. . . . I am sure Mrs. Rosenberg understands and appreciates that I had an interest in the responsibilities which she assumed throughout her career with her adopted Government."

These sentiments, which were expressed at length, did not however prevent him from

suggesting in the same letter that Mrs. Rosenberg made it possible for spies to infiltrate the Manhattan project.

The flair with which Freedman undertook his remarkable performance is, indeed, not unlike that of the Good Soldier Schweik. But Schweik, who was given to tweaking the nose of authority by appearing to lick its boot, abased himself to ridicule his betters, not to praise them. Freedman's self-abasement has very different ends.

When one reads his accumulated testimony, the humor of the performance fades; the essential pitifulness of the actor grows, and with it grows the problem of what roles actors like him should be permitted to play on a very public stage. Freedman's role in the Rosenberg hearings was essentially that of a man stimulated by the discomfort of sharply split allegiances into hunger for impressive non-Jewish friendships, a hunger so great that he made facts and truth subservient to his social yearnings. This troubled man with an urge both to make good and to do good precipitated the Rosenberg affair; in effect he set the form that the hearings and the subsequent investigations would take. And, oddly enough, he may have run fewer risks of subsequent legal action than many of the other witnesses. His testimony, involved, confused, contradictory, and in any case second- to fourth-hand, is, though amply able to hurt other persons, too amorphous to tie down for purposes of correction or redress.

BY CONTRAST, the testimony of Ralph De Sola, second of the fervent amateur anti-Communists, was straightforward, non-contradictory, and unchanging. It was, in fact, the only testimony that specifically tied Mrs. Rosenberg to any Communist organization. De Sola stated that he had seen Anna M. Rosenberg three or four times in 1934 and 1935 at the John Reed Club, that his sponsor in the Communist party had indicated that she was a Communist, and that she had been one of the founders of a Communist-inspired magazine, *Science and Society*. He suggested as witnesses a man who he said was a Communist, one James Magraw; Helen Winner, who is De Sola's ex-wife; and a former FBI agent, George Starr, with whom De Sola had many contacts, and to whom he said he turned

over promotional material on *Science and Society*. He described Mrs. Rosenberg's appearance in detail: height about five feet; rather slim; slight; dark brown hair; Central European features; roundish face. He left very little room for possible mistakes of identity.

Apparently De Sola was himself warmly convinced of the truth of his charges. He was eloquent on the dangers of having Mrs. Rosenberg in the Defense department: "It was common knowledge around the Communist party headquarters that Anna Rosenberg could be depended on to see that Communists and fellow-travelers and people sympathetic to the whole Soviet idea were given Government positions and were put in jobs that were important. . . . The danger to the Government of the United States in having a Mrs. Anna Rosenberg near the helm is not merely in her pro-Soviet sympathies and affiliations and her ability to pack the Pentagon with her Moscow-indoctrinated mob, but in the entire set of ideas that she holds with respect to the so-called welfare state, which if applied in full, would soon reduce America to the shambling status of England, and with its sneak attack against individualism and free American enterprise, would bring us to socialism, which is the main corridor to Communism and chaos. . . . If Mrs. Anna Rosenberg has left the Communist movement, let her declare that fact now and openly."

Confronted with Mrs. Rosenberg herself, De Sola did not budge from his charges:

MRS. ROSENBERG: Mr. De Sola, where and when did you see me in the John Reed Clubs?

MR. DE SOLA: At the various meetings that they had in the summer, the late summer and the fall of 1934 and 1935. They were along Sixth Avenue between Eighth Street and Fourteenth Street. The last time was in the Civic Repertoire Theater rehearsal room on the second floor.

MRS. ROSENBERG: And I spoke to you?

MR. DE SOLA: Yes, you spoke about the growth of the John Reed Club and what an excellent device it had been for a sounding board for Communist propaganda and as a recruiting ground.

MRS. ROSENBERG: Mr. De Sola, I don't believe that any human being wants to do what you are doing purposely. Please come and look at me carefully and see whether you know me from my pictures or you actually know me.

You came into the room and said, "That is the woman." You never looked at me. Do you know what you are doing to me?

MR. DE SOLA: I am looking at you and I am looking at you now.

MRS. ROSENBERG: And I am the woman that you sat next to or talked to in the John Reed Clubs?

MR. DE SOLA: We stood up when we talked. Would you mind standing up?

MRS. ROSENBERG: I will stand up. Now tell me, am I the woman in the John Reed Club?

MR. DE SOLA: Yes, ma'am; you are, I am sorry to say so.

Indeed, the only remotely contradictory note within De Sola's testimony against Mrs. Rosenberg was his expression of surprise at being called to testify when he knew so little about Mrs. Rosenberg.

The difficulty with De Sola's testimony was, of course, that all of it that touched on Anna Rosenberg was flatly contradicted by the Senate subcommittee that read the FBI files and by the persons De Sola himself had suggested as witnesses. Why then did De Sola come forward with such testimony? It is clear that Freedman was the person who drew him into the affair, but it also became clear that he had been privately telling his story about Mrs. Rosenberg at least two weeks before he met Freedman.

ANTI-SEMITISM cannot very well be considered as a possible motive. Queried as to any feeling about the Jewish faith, De Sola said, "I couldn't afford to have such a feeling. My father's people were Spanish Jews, my mother's people were Pennsylvania German Lutherans. I have to be as a matter of birth liberal. I have to be an American liberal." According to his ex-wife he had some conflict in his mind in regard to his mixed origins, but she told the committee that his three wives were all Jewish and that she herself had considered him friendly to Jews. Not a Zionist, De Sola said of the Zionists, "They seem to be people who inasmuch as they have been subsidized to a great extent by groups in this country, could in a sense be useful to this country, and perhaps help stem a Soviet invasion in that part of the world, and I think they should be given every aid and comfort now that *fait accompli* is here, but I don't think it was a wise choice of territory for it." As

for De Sola's statement of religious beliefs, while it was singularly loose and naive, it did not at all resemble Freedman's: "It is the religion of the free open space and the Grand Canyon and the better things of life and the belief in the individual man. It is not that I can define it in a narrow sectarian sense and say I am an Episcopalian or a Reformed Jew, et cetera. I think of these things in the large."

As for De Sola's character, the most critical formulation of it came from James McGraw who said that De Sola was a highly intelligent worker, but who charged him with untruthfulness and an urge for notoriety while he was in the WPA Writers' Project, imputations which were not, however, supported by other witnesses. De Sola's ex-wife saw a tendency in him toward ideological extremism and fanaticism, together with an inclination to blame external conditions for his failures in the world rather than his own faults. She testified that he was a truthful person, limited in this regard only by a will to believe what he said.

A somewhat more conservative and favorable picture of De Sola emerged from the testimony of George Starr and J. B. Matthews. The latter had read De Sola's testimony before the Dies and Rapp-Coudert committees, and he said: "I do not hesitate to say that as of that period and as of that testimony, I have never read more intelligent, articulate, careful, and balanced testimony before any Congressional committee. . . . I consider Mr. De Sola at that time as competent as it would be possible for a witness to be. . . . Since the time of his testimony I would say that his statements have been confirmed a hundred per cent—not even 99." Starr, for his part, said, "I had rather been impressed with him in the past as being rather level-headed, a rather level-headed sort of a fellow, and rather likable chap, personally, and I just, in my own mind, could not picture him of his own volition becoming involved in anything of this sort"—i.e., the accusations against Mrs. Rosenberg.

One possible way of explaining De Sola's contradicted testimony is by assuming that a sort of overdevelopment of the memory came upon him when Mrs. Rosenberg was nominated Assistant Secretary of Defense. De Sola had given information on more than a hundred occasions to the FBI, and on fifty

to sixty of them he commented to agents that there were "bigger fish to fry" than those they were examining. If it is assumed that constant stimulation of the memory through such interviews could very easily lead to a mistake of memory concerning matters fifteen years old, then it would be natural for him to suppose and then to imagine that he did what he actually did in other cases—talk to his wife and to FBI agent Starr. It would be natural for him to imagine that there was talk about Mrs. Rosenberg at Communist headquarters. It might even be that De Sola's mistake stemmed from meeting Mrs. Rosenberg while she was arbitrating a union dispute in 1936—De Sola's ex-wife seemed to recollect such a meeting—or from meeting another Anna Rosenberg, a Communist and a John Reeder, who resembled *the* Anna Rosenberg.

Such accidents of memory are conceivable. What is hardly conceivable, however, is that De Sola could mis-recollect the identity of James McGraw, whom he described as his sponsor in the Communist party. There is far more occasion to remember such a person than there is to remember somebody from a public meeting. De Sola testified flatly that his sponsor was James Magraw, while James McGraw—there is contradiction even in the spelling of the name—testified just as flatly that he had never been a member of the Communist party or of the John Reed Club. This clash of testimony may well be the biggest item of unfinished business from the Senate hearings.

IN ADDITION to the amateurs, three interested professionals appeared before the committee. Two of them, witnesses to other persons' testimonies, played relatively modest roles. J. B. Matthews, however, was conspicuous; his role illustrated to some degree the interest these professionals must take in any anti-Communist *cause célèbre*. In such situations they find themselves in a position similar to that of political experts on the occasion of national elections. They are disinterested observers, but their prestige rises if they play a discreet part in the proceedings and, especially, if they back the winning slate.

Matthews introduced himself into the Rosenberg affair by way of a nine-page memorandum, a document of considerable detail

on the organizations to which *a* Mrs. Rosenberg was said to have belonged, but of no detail at all on *the* Mrs. Rosenberg's actual membership. The preamble to the document, in fact, eschewed any attempt to determine membership. It made it appear that the memorandum took no sides, whereas on the face of it both sides were taken.

The first sentence in it announced, "This memorandum neither states nor implies that Anna M. Rosenberg is a Communist sympathizer"—a useful statement in the event Mrs. Rosenberg be found to lack Communist connections. The second sentence stated, "Its sole purpose is to point out that the name of Anna Rosenberg was publicly recorded as having been affiliated with four Communist-controlled organizations. . . ."—a useful statement in the event Mrs. Rosenberg should be found to have Communist connections.

This neat balance was upset by Benjamin Freedman in the memorandum of his own in which he quoted J. B. Matthews to the effect that an FBI file would show Anna Rosenberg to be "the least desirable person in the whole United States" for Assistant Secretary of Defense. In attempting to restore his balanced impartiality, Matthews denounced this use of his name with considerable ire, told the Senate committee that he had never made any such statement in his life, and declared his incompetence to determine the identity of any Anna Rosenberg. On the other hand, he let the committee know that he had heard from Theodore Kirkpatrick—an FBI man who had become an editor of *Counterattack* and who had earlier prepared a memorandum from his own files for the Senate committee—that a William Harris had reported to the FBI that he was in a Communist cell with Mrs. Rosenberg, *the* Mrs. Rosenberg, in fact. Again Matthews was ranged on both sides of the question without having committed himself to either.

The new balance proved somewhat difficult to maintain. In denouncing Freedman, Matthews had declared that Freedman had talked with him in his apartment for only five minutes. Freedman, however, had set the time at no less than twenty minutes, during which he said he had drunk a cup of tea and had listened to Matthews playing the organ. He even described Matthews stand-

ing in a bathrobe in the doorway and, in Freedman's words, "making remarks to the effect that the country was finished if it [Mrs. Rosenberg's appointment] was confirmed."

When Kirkpatrick came before the committee, his testimony, while carefully balanced, did not sit at exactly the same angle as Matthews'. Kirkpatrick said that he had indeed talked with Matthews about Harris, but to the best of his recollection he had not mentioned Harris's name. On the other hand he immediately added that he "suggested to Dr. Matthews that perhaps it would be a good idea for someone to contact Mr. Harris." This raised the problem of how the name of Harris could be transferred from one mind to another without an exchange of words, but this problem became academic when Harris, now an investigator for the Americanism division of the American Legion, himself appeared to testify that he had never seen Mrs. Rosenberg in any circumstances whatever.

The blow-hot blow-cold attitudes of the professionals reflected, no doubt, a conscientious urge to find the exact truth and a nagging uncertainty as to just what the exact truth was. It is conceivable, however, that the professionals were anxious to put themselves on record in such a manner that they would not look like fools if Mrs. Rosenberg turned out to be a Communist and that they would not look like cads if she turned out "pure." Generally speaking, an atmosphere of caution surrounded the professionals' statements, and their testimony somehow gave the impression of things left unsaid.

IF A SENATE hearing by its very nature provokes activity among professional spotters of Communists, it provokes, again by its very nature, inactivity on the part of those bystanders, innocent or otherwise, who are called to testify. Full and free speaking on an issue which generates public heat can be dangerous for anyone who lives in a community and works at a job. The one noisy exception among the bystanders was Dr. Marjorie Shearon, but she was, in effect, a special pleader: much aroused by national health schemes, she wished to indicate her distrust of persons who support them and to make it clear that many of them belonged to organizations that had been cited by one

investigation or another as subversive. Dr. Shearon paid no attention to other testimony and argued at length that Mrs. Rosenberg's former membership in the Committee for the Nation's Health made her unfit to work in the Pentagon, but her argument came to nothing and produced no effect on the committee.

The testimony of the other bystanders, while detailed at certain points, can hardly be called full. Fulton Lewis's reporter kept to the task of establishing that neither he nor his companion from Senator McCarthy's office had misrepresented themselves as committee investigators while interviewing Freedman and De Sola in New York. Isidor Schneider said that he did not know McGraw, that he had never seen Anna Rosenberg, and that he himself had never been a member of the John Reed Club; he declined to answer questions about Communist party membership, and had nothing further to say. De Sola's ex-wife, herself a former member of the party, indicated that she knew McGraw but did not indicate whether or not she knew him as a Communist; she stated that she had seen Anna Rosenberg only at a labor arbitration meeting. McGraw, on his part, confined his testimony to denials of membership either in the Communist party or in the John Reed Club, and of ever having laid eyes on Anna Rosenberg. He made charges of untruthfulness and notoriety-seeking against De Sola who had named him a member of both the club and the party. No other information of note emerged.

And no information at all emerged as to the activities of certain persons who were mentioned frequently in the report and who conceivably may have made up a fourth group of interested persons. These persons were Senator McCarthy, Congressman Rankin, Fulton Lewis, Jr., Gerald L. K. Smith, and an associate of Joe McWilliams. What they did or what they did not do, did not get recorded officially.

IT CAN be surmised, however, that certain of these individuals were much in the minds of the Senators of the Armed Services Committee. Less than a month before, the chairman of the committee, Senator Tydings, had been defeated for reelection on charges of having whitewashed government officials who had been accused by Senator

McCarthy. This defeat suddenly revealed that the country was of two minds as to how to deal with persons accused of Communist connections, and that more of the voters might be of McCarthy's mind than not. McCarthy suddenly rose to a position of power within the Senate. Had it not been for these recent events it might not have proved necessary to reopen the Rosenberg hearings. As it was, not to reopen them would have been dangerous to the political life of the Senators involved and, more important, to the political and even psychological stability of the country. The wisdom of holding additional hearings must have been doubly apparent when it was learned that an investigator for Senator McCarthy had interviewed two of the committee's important witnesses and had secured the sworn statement of one of them before the committee itself received it. (The dilemma posed by Mr. McCarthy and his like is that they can neither be ignored nor answered out of hand, while to try to deal adequately with their wholesale accusations inevitably involves spotlighting them and their activities.)

IN ANY hearing it is, of course, good political practice for Senators to read as many letters, telegrams, memoranda, and documents as possible into the record, to ask questions they have been asked to ask, even though the questions may already have been asked and answered, and to insert occasional complimentary remarks about the people back home. (Thus Senator Hunt noted with satisfaction that on a long list of names of members of a cited organization there were no names from Wyoming.) The Rosenberg hearing carried this practice a step further; it imposed a time limit on only one witness and let most of the testimony continue to unusual length. The hearings at times sounded like a record each of whose grooves is played over again, but they avoided the possible danger of anyone's later complaining that witnesses had been intimidated or stifled.

In general the strategy of the hearings was very wisely conceived and the day-to-day tactics of it were skillfully conducted. The Senators followed along a series of very tortuous lines of evidence without any mix-up greater than a brief confusion of the maga-

zine *Freeman* with the witness Freedman. Witnesses were subject, of course, to the minor harassments common to all investigations and hearings: questions were asked about trivia such as the ages of women, business matters such as names of clients, and private considerations such as religious beliefs and the duration of marriages. But there was a general atmosphere of dignity, and with one exception the witnesses were treated with uniform politeness and consideration.*

Besides allowing everyone's accumulated steam to shoot off, thereby crimping any tendencies there may have been towards public suspicion and hysteria, the committee took two important steps. It effected good and intimate relations with the FBI by means of a subcommittee of three, who read the complete file on Mrs. Rosenberg. And it rejected completely the doctrine that the burden of proof rested upon the attacked instead of upon the attacker—a doctrine highly popular among Mrs. Rosenberg's accusers. De Sola constantly suggested that it was up to Mrs. Rosenberg to prove she was not Communist by producing the other Mrs. Rosenberg should there be one. And it was a remark of Dr. Shearon to the effect that the burden of proof rested on Mrs. Rosenberg that prompted Senator Morse to put into words the procedure that the committee followed all throughout the hearings: "As long as I am on any committee in this Senate, I am never going to let a witness transfer the burden of proof on the person accused. . . . As one who believes in our constitutional system, I want it clearly understood that the burden of proof is on those that bring the accusation. . . ."

*The exception was Dr. Shearon, the opponent of national health insurance, who had sharply attacked Senator Morse in a news-letter entitled "Challenge to Socialism." Dr. Shearon, who had no first-hand evidence, was in the process of wearing her own argument out when Senator Morse intervened with questions as to her nervous health and as to whether she had ever been married to a man to whom she had never been married. He introduced letters from two former employers, Senator Murray and Director Schneider of the Bureau of Research and Statistics, which questioned her sanity. He took occasion to mention in the same sentence the age of her husband and the name of another man. This interruption, difficult to defend on moral grounds, was without bearing on the matter at issue.

THE importance of these two steps should not be underrated. The problem of Congressional hearings is essentially the problem of how to delimit them and still permit wide freedom of procedure. A hearing is not the same thing as a trial; its purpose is to get information, not to assign innocence or guilt. In the absence of delimiting rules of procedure, however, a hearing can be turned into a public inquisition. Indeed, under the guise of testing credibility, most hearings pry into witnesses' private affairs much further than necessary. And sometimes they seem to have the effect of belaboring witnesses and condemning them.

Since this was one of the effects of the recent Kefauver hearings on crime and politics, it is helpful to contrast that investigation with the Rosenberg hearings, in which Senator Kefauver, it so happens, was one of the active committee members. Temperate and courteous, Senator Kefauver is invariably judicious in his own questioning. But the strategy of his investigation into crime and politics was notably different from that of the investigation into Mrs. Rosenberg's accusers. There was one factor in common: few time limits were put upon witnesses. But the extra time, which in the one hearing gave witnesses their chance at a full story, in the other subjected witnesses to what must have amounted to a pronounced nervous and mental attrition. In the crime investigations, a group of Senators and a very large investigative staff hammered relentlessly at individual men who did not have full records in front of them and assistants behind them to get additional data.

The fact that most of the men thus attacked were men of unsavory reputation does not alter the problem of what tactics are proper in Congressional investigation. In the Kefauver investigation, witnesses before an information-gathering body were subjected to the most highly public ordeal in history. In effect, they were asked to admit to wrongdoing of which normal legal process had not convicted them. While they were not called guilty men, they were treated as guilty men, as criminals who, if they could not be brought to book for their crimes, could be maneuvered into a position in which they could be held for contempt, misrepresentation of citizenship documents, and improper tax returns.

There are, however, two things which are morally as bad as crime, and one of which is socially worse. The first, self-righteousness toward criminals, is condemned by the higher religions because it gives a false conviction of goodness to the individual person and lets him forget his own responsibility for the world's evil. The second, the idea that the conviction of the guilty is more important than the protection of the innocent, is foreign to the tradition of democratic government; it fits the procedure that totalitarian countries use in the perpetuation of their tyranny. Whenever there are laws to protect the innocent, guilty men will go free. To attempt to circumvent this situation, of which a free people should feel proud, by extrajudicial means, is to weaken basic democratic safeguards. Given the use of radio and television, it is also to stir the public to extraordinary intensity of emotion.

IF SUCH an approach and such publicity should ever be used in a Congressional hearing involving charges of disloyalty or Communism, it could very possibly lead to public hysteria of very unfortunate social consequences, and individual discomfiture. So long as such an approach is not outlawed, there will always be the chance that some Congressman will seek publicity and power through the unholy alliance of righteousness, denunciation, and television. Clearly the time has come to set limits.

In any case, in a country ruled so largely by public opinion as the United States, delimitations are especially important. The hearings themselves affect public opinion, and public opinion in turn frequently affects the hearings. This interrelationship can be fruitful if hearings do not degenerate into accusation centers and hysteria factories; it can be a source of danger if accusations breed more and more accusations and hysteria more and more hysteria. Under such circumstances, it even becomes increasingly difficult to persuade citizens to give information to committees freely.

The importance of the cooperation between the FBI and the Armed Services Committee in the Rosenberg hearings lies in the fact that through such cooperation a great deal of highly controversial material can be processed without rousing unnecessary public stir. Evidence that is actual evidence and

not an alarming hodgepodge of fact and fancy can then be brought publicly before the committee. As long as the idea still persists that a Congressional hearing is an occasion to try the mettle of witnesses by means of some public ordeal, it may be difficult to enlarge the area wherein facts are quietly processed and to narrow the area wherein they are publicly discussed and recorded. The Rosenberg hearings, however, point in the right direction. They point towards the greater use of off-the-record sessions, which would aid in eliminating witnesses hungry for publicity, witnesses with nothing but hearsay evidence, witnesses who are incoherent, mentally irresponsible, incurably prejudiced, and so on, and who are only too eager to take advantage of the immunity which Congress offers them.

THE clear enunciation of the burden-of-proof rule points toward another and equally needed development. Congressional hearings, since their aim is supposed to be information, take no account of statutes of limitations, the method used by courts of law to take into account the weakness of man's memory. Yet a man's memory is no better in a Senate committee chamber than it is in a court. Facts fifteen years, ten years, even five years distant can be left to the historians and the archivist. The only facts that can stick well in a man's memory are fresh facts. It is ridiculous to attempt to evaluate a man's memory of facts fifteen years old—

and to this evaluation the Armed Services Committee had to devote much of its effort in its considerations of Mrs. Rosenberg. If Mr. De Sola and Miss Winner were unable to agree on the year in which they were divorced—one said 1942, the other 1944—there is little likelihood that they or any other two people would be able to agree on what happened in 1935 or 1936.

At present, concern over Communists in our midst—plus what might be called interest in criminals—is forcing hearings and investigations to try to bridge the gap between past memory and present fact: backward and backward go men's minds, searching for the signs of distant affiliations. There is an encouraging measure of hope in the relatively quiet progress of the Rosenberg hearings, and in its calm exploration of the hazards of taking memory for fact. It may further be hoped that Congress and popular opinion will yet realize that the past as mere past is not of the utmost significance, that the past lives only in the present and that to deny that there is anything creative in man—that he can change, mature, and learn—is to deny the democratic process itself. When a fixation on possible heresy (which is distinct from betrayal of responsibility or treason) in the distant past is replaced by a cool appraisal of the needs and possibilities of the present, we may expect that the kinds of personalities washed to the political surface by the Anna Rosenberg case will be safely retired to their private enterprises.